

Senate Democrats Threaten Unprecedented Power Grab

In the 2010 election, voters rejected two years of unified Democrat control of the federal government. The message was clear: Americans would no longer tolerate a left-wing, big government agenda. This week, the Senate will reconvene with an expanded Republican minority. Democrats would be expected to heed the voice of the voters and work to find consensus solutions to the problems of the day. Shockingly, many Democrats have indicated that they prefer to ignore the election results, shut out their Republican colleagues, and – on a party line vote – rewrite the Standing Rules of the Senate to dramatically curtail minority rights to make it easier to pass an agenda the American people rejected.¹ All those who care about democracy and our republican system of government should reject these efforts.

The Senate is a unique legislative institution, designed to guarantee that the minority party – and the large block of Americans they represent – has a voice. The Senate’s rules are written to require minority participation, which tends to result in legislation with bipartisan and broad public support.² Two distinctive features of Senate procedure are the right to debate and amend. The Democrat majority has made a habit of squelching both of these features, preferring to use procedural gambits to force a partisan agenda through the chamber.

The Majority Leader has used his powers to block Republican input on legislation. The Majority Leader is always the first to be recognized on the Senate floor, and he can use that power to offer a series of Democrat amendments to pending legislation in a manner that prevents Republicans from offering any of their ideas. This is called “filling the tree.” *According to the Congressional Research Service (CRS), Majority Leader Reid has employed this tactic a record 44 times.³ He has used it to block minority input into legislation three times more often than the previous Majority Leader, and more than the past six Majority Leaders combined.⁴*

The Majority Leader has made a habit of shutting down debate before it even starts. In the Senate, the majority can force an end to debate on any matter by a procedure known as cloture. Majority Leader Reid has indicated his lack of interest in deliberation by moving to shut down debate *the very day* measures are first considered on the Senate floor. *According to CRS, the majority has done this nearly three times more, on average, than the previous six majorities.⁵ In fact, the current majority in its two Congresses in power has moved to end debate on measures a total of 29 times prior to any amendments even being voted on.⁶ The previous majority did this less than half as often—only 12 times in the preceding two Congresses.⁷*

The Majority Leader also has limited discussion of his agenda by short-circuiting the committee process. In the Senate, legislation generally is referred first to a committee of Senators with specialized experience in the matter at hand. The committee process typically involves hearings and legislative “markups” where a small group of Senators can discuss proposed legislation in detail and consider a wide range of amendments. This process can allow for significant minority party participation. However, the current majority has completely eliminated the committee process for important matters.⁸ *According to CRS, this majority has set a record for bypassing the committee process, doing so 43 times*

total.⁹ In fact, according to CRS, it has done this almost 50 percent more than the last majority and, on average, twice as much as was done in the prior seven Congresses (1993 to 2006).¹⁰

The Senate's rules provide needed protection for the minority. Democrats complain that Republicans (often joined by moderate Democrats) have insisted on their rights to unlimited debate on multiple occasions during the last Congress. But this is the only tool at the minority's disposal when the majority routinely insists on excluding them from the legislative process. One retiring Democrat Senator recently called the majority's abuse of the rules "tyrannical" and called opposition to cloture the "inevitable and understandable consequence" of such abuse.¹¹

Recent history demonstrates that Senate rules promote superior, bipartisan, legislation. In the past Congress, during a time of historic Democrat power in Washington, the Senate's rules allowed the minority to resist some of the majority's most extreme and unpopular agenda items.¹² It also gave Republicans the bargaining power they needed to help improve legislation. A recent example of this is the 9/11 First Responders bill, the goals of which Republicans supported, though they were concerned that the bill as drafted by Democrats could allow for excessive costs and runaway trial lawyer fees.¹³ Republicans insisted on having those concerns addressed, and the bill was changed for the better. The improved bill passed the Senate unanimously.

The Senate, and the rules under which it operates, performs a unique and beneficial function in our legislative system. Democrats, fresh from an electoral "shellacking,"¹⁴ should respect both the Senate's role in the system and the will of the voters by working with Republicans in the 112th Congress on commonsense, consensus measures that most Americans support. Unilaterally changing the rules of the Senate by a bare majority would be unprecedented – no Senate Majority Leader has ever done such a thing. Moreover, it would forever change the nature of the Senate and constitute a naked partisan power grab. Such a move would disrespect our bipartisan system and the will of the American people.

¹ "Senate's Returning Democrats Unanimously Favor Filibuster Reform," by Dan Friedman, *National Journal*, December 22, 2010. <http://nationaljournal.com/congress/senate-s-returning-democrats-unanimously-favor-filibuster-reform-20101222>

² For a fuller discussion of Senate rules and minority rights see RPC Paper: "Preserving Senate Rules: Guaranteeing All American Voices are Heard," April, 21, 2010, <http://rpc.senate.gov/public/files/042110ProtectingSenateRulesgn.pdf>

³ CRS research provided to author.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ To name a few: a bill to grant legal status to certain unlawfully present immigrants, a public employee unionization bill, and the final healthcare reconciliation bill.

⁹ CRS research provided to author.

¹⁰ Id.

¹¹ Senator Specter, Congressional Record, December 21, 2010, S10855

¹² The Democrat-drafted "omnibus" spending bill and the "cap and tax" energy legislation are just two examples of unpopular legislation that the Republican minority was able to defeat on behalf of the American people.

¹³ "Obama Signs the 9/11 First Responders Health Care Bill," by Sunlen Miller and Yunji de Nies, ABC News, <http://blogs.abcnews.com/politicalpunch/2011/01/obama-signs-the-911-first-responders-health-care-bill.html>.

¹⁴ "Obama Concedes 'Shellacking'," by Kara Rowland, The Washington Times, November 3, 2010, <http://www.washingtontimes.com/news/2010/nov/3/obama-concedes-shellacking/>